



Federal Communications Commission  
Washington, D.C. 20554

July 21, 2005

DA 05-1771

Rachael E. Schwartz  
Joshua J Izenberg  
Baker & McKenzie  
815 Connecticut Ave., N.W.  
Washington, D.C. 20006

Re: Call Sign KIVD0009

Dear Counsel:

This letter is in response to a renewal application, request for waiver of the substantial service and construction requirements of sections 95.831 and 95.833, respectively, of the Commission's rules,<sup>1</sup> and request for an extension of time for Station KIVD0009, filed by Amerilink Interactive Services, Inc. (Amerilink) on March 25, 2004.<sup>2</sup> For the reasons set forth below, we deny Amerilink's requests for waiver and extension, and dismiss its renewal application.

On March 28, 1994, through the lottery process, the Commission granted Mr. Ignacio Santos De Hoyos a license to operate in the 218-219 MHz service in Boston, MA under call sign KIVD0009, which he later *pro forma* transferred to Amerilink. Pursuant to the Commission's rules in effect when this license was granted, stations were required to be placed into operation within five years from the date the license was granted.<sup>3</sup> Moreover, unless an extension of time to construct was granted, the authorization would terminate automatically if the construction and operation deadlines were not met.<sup>4</sup> In September 1999, the Commission eliminated the three- and five-year construction benchmarks, extended the term of all 218-219 MHz service licenses to ten years from the date of their license grant, and adopted a "substantial service" showing to be assessed at the expiration of the license term as a condition for

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<sup>1</sup> See 47 C.F.R. §§ 95.831, 95.833.

<sup>2</sup> ULS File No. 0001671535. Petition of Amerilink Interactive Services, Inc. for Waiver of or Extension of Time to Comply With FCC's System Requirements for 218-219 Licensees, filed by Amerilink on March 25, 2004 (Amerilink Petition for Waiver and Extension).

<sup>3</sup> The Commission adopted the five-year license term in the *1992 Allocation Report and Order* in the context of awarding licenses by lottery "to reduce any potential for trafficking in licenses by persons who have no real interest in constructing," and as "consistent with the license term used in most other private radio services." In the Matter of Amendment of Parts 0, 1, 2 and 95 of the Commission's Rules to Provide Interactive Video and Data services, GEN Docket No. 91-2, *Report and Order*, 7 FCC Rcd 1630, 1641 (1992) (*1992 Allocation Report and Order*), *on recon.*, *Memorandum Opinion and Order*, 7 FCC Rcd 4923 (1992), *further recon.*, *Second Memorandum Opinion and Order*, 8 FCC Rcd 2787 (1993). The five-year license term conformed to the five-year license term of the General Mobile Radio Service, 47 C.F.R. § 95.105, and the Personal Radio Service under which the 218-219 MHz service is classified, 47 C.F.R. § 95.1(c).

<sup>4</sup> See 47 C.F.R. §§ 1.946, 1.955.

renewal.<sup>5</sup> Accordingly, Amerilink was required to provide substantial service within the service area by March 28, 2004.

In its license renewal application, Amerilink states that it has not been able to provide 218-219 MHz service in the Boston, MA market. Therefore, it has not met the requirements prescribed in sections 95.831 and 95.833 to minimally warrant a renewal of its license for Station KIVD0009. However, Amerilink states that is hoping to sell the license to a party that has successfully established 218-219 MHz service networks, but explains that it has not been able to do so due to a lengthy ongoing arbitration over an unsuccessful attempt to sell its license to a third party.<sup>6</sup> Amerilink states that it expects the arbitration to conclude in its favor in the near future, which will enable it to find a purchaser for the license quickly.<sup>7</sup> Amerilink argues that a waiver of the substantial service and construction requirements of sections 95.831 and 95.833 is appropriate because the public interest in promoting an effective and efficient use of the 218-219 MHz service spectrum would be better served by granting Amerilink's renewal application rather than redistributing Amerilink's license to another party. In the alternative, Amerilink requests a two-year extension to meet its substantial service and construction obligations with respect to Station KIVD0009, stating that failure to meet the construction deadline was a result of difficulties that were beyond its control.<sup>8</sup>

Amerilink's waiver request. Pursuant to section 1.925 of the Commission's rules, a waiver may be granted if it is shown that: 1) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that grant of the requested waiver would be in the public interest; or 2) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>9</sup> Amerilink does not present a compelling argument demonstrating how application of sections 95.831 and 95.833 would frustrate the underlying purpose of these rules. On the contrary, we believe that a grant of Amerilink's waiver request would subvert the Commission's overall policy goals to promote the rapid development of viable 218-219 MHz services. It appears from the record that Amerilink was merely trying to sell the rights to KIVD0009 and little or no effort was put towards offering service with the license. Moreover, Amerilink presents no unique or unusual factual circumstances that would warrant a waiver consistent with the public interest, nor is there "good cause" shown, and therefore the waiver request is hereby denied.

Amerilink's request for an extension of time. Pursuant to section 1.946 of the Commission's rules, an extension of time may be granted if it is shown that "failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond [the licensee's] control." Further, section 1.946 states that extensions will not be granted for failure to construct because the licensee

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<sup>5</sup> See In the Matter of Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, WT Docket No. 98-169, RM-8951, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999).

<sup>6</sup> See Amerilink Petition for Waiver and Extension at 8.

<sup>7</sup> See *id.* at 6.

<sup>8</sup> See *id.* at 12.

<sup>9</sup> See 47 C.F.R. § 1.925. Alternatively, pursuant to section 1.3 of the Commission's rules, the Commission has authority to waive its rules if there is "good cause" to do so. 47 C.F.R. § 1.3. See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

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undergoes a transfer of control or intends to assign the authorization.<sup>10</sup> Amerilink points to a lawsuit against its majority owner and difficulty in “securing workable technology” as causes beyond its control that warrant granting an extension of two years. Amerilink points out that the license is held up in arbitration due to its failed attempt to sell the license and if relief is granted it intends to transfer the license to a third party that will construct facilities. Therefore, we do not find the lawsuit to be a compelling reason for an extension of time. Moreover, Amerilink’s inability to obtain the necessary equipment is similarly unconvincing because, as Amerilink itself admits, others have been able to do so.<sup>11</sup> The request for an extension of time is hereby denied.

Accordingly, for the reasons stated herein, pursuant to sections 1.925, 1.946, 1.955 and 95.831 of the Commission’s rules, 47 C.F.R. §§ 1.925, 1.946, 1.955 and 95.831, we deny Amerilink’s requests for waiver and extension of time, dismiss its renewal application, and notify Amerilink that the license KIVD0009 terminated automatically on March 28, 2004. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission’s Rules, 47 C.F.R. §§ 0.131 and 0.331.

Sincerely,

Thomas Derenge  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

cc: Amerilink Interactive Services, Inc.

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<sup>10</sup> 47 C.F.R. § 1.946(e)(1).

<sup>11</sup> See Amerilink Petition for Waiver and Extension at 11. See also San Francisco IVDS, Inc., *Memorandum Opinion and Order*, 20 FCC Rcd 1960 (2005) (reinstating and renewing a 218-219 MHz service license where the licensee failed to renew its license in a timely fashion because it was actually offering service to customers at the time its license expired).